IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3940 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO

to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO

of the judgement?

4. Whether this case involves a substantial question : NO

of law as to the interpretation of the Constitution

of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the concerned : NO

Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

JOLLY & HONEST CO.

Versus

AMIN A SAMAD

Appearance:

1. Special Civil Application No. 3940 of 1991

MR DG CHAUHAN for Petitioner No. 1

MR DS VASAVADA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 15/06/2005

C.A.V. JUDGEMENT

The present petition has been filed by the petitioner under Article 226 and 227 of the Constitution of India challenging the judgement and Award dtd.20/2/1991 passed by the Labour Court, Ahmedabad in Reference (LCA) No.9034 of 1978, whereby the Labour Court directed the petitioner to reinstate the respondent on his original post with full back wages. The Labour Court also awarded Rs.100/- as costs.

2. Learned counsel for the petitioner has mainly argued that the respondent was engaged as a temporary "Cutter" in the tailoring shop on monthly salary of Rs.340/-; that on 26/4/1978, the respondent

himself left the job and joined another tailoring shop, M/s.Siddharth Tailors, Ahmedabad on higher pay of Rs.475; that the petitioner has not terminated the services of the respondent; that petitioner asked the respondent to report for work, but the respondent did not report for work as he had joined M/s.Siddharth Tailors on higher monthly salary; that the respondent had also worked with other employers; that the respondent did not report for work even after the order passed by this Hon'ble Court; there is no violation of Sec.25(F) of the I.D. Act; Consequently, it is prayed to quash and set aside the impugned Award.

3. On the other hand hand, Mr.D.S. Vasavada,

learned counsel for the respondent has mainly argued that

the present petition has been filed under Articles 226

and 227 of the Constitution of India and this Court has

limited jurisdiction under the said Articles and this

Court cannot re-appreciate the evidence and interfere

with the finding of fact arrived at by the fact finding

authority when no error is committed by the Labour Court.

Furthermore, the reference was made by the appropriate

Government in 1978 and Award has been passed by the

Labour Court on 20/2/1991. In support of his arguments,

he has placed reliance on the decisions reported

in AIR

1984 SC, and AIR 1988 SC 2163; that the respondent has

not stopped from reporting for work, but his service has

been terminated by the petitioner illegally and

arbitrarily; that during the course of conciliation

proceedings before Mrs.Saiyed, the Government Labour

Officer, the respondent was asked for report for work,

and when the respondent had gone to the shop of the

petitioner to resume his duty, he was not allowed to

report for work; that the services of the respondent has

been terminated without following the mandatory procedure

; that the respondent was not engaged with other employer

as alleged by the petitioner; that the concocted

story of

the petitioner is not believed by the Labour Court; that

the Labour Court has considered all the aspect of the

matter and thereafter, the Award has been passed; that

the impugned Award is just, legal and proper and

therefore, no interference is called for at the hands of

this Court. Consequently, it is prayed to dismiss the

petition. He has also relied upon the decisions reported

in AIR 2002 SC 834 AND 1998 GLH (1) 461.

4. Having heard the learned counsel for the

respective parties and considering the evidence on

record, I am of the opinion that the Labour Court has not

considered the aspects of the matter and the Labour

Court

failed to appreciate that though various opportunities

were given by the petitioner and even after the order

passed by this Court, the respondent has not reported for

work. Considering the facts and circumstances of the

case and the conduct of the respondent, I am of the

opinion that the Labour Court has erred in not

considering the relevant aspects of the matter while

passing the award and therefore, the impugned Award is

required to be quashed and set aside.

5. In the result, this petition is allowed. The

impugned judgement and Award dtd.20/2/1991 passed by the

Labour Court, Ahmedabad in Reference (LCA)

No.9034 of

1978 is quashed and set aside.

(S.D. Dave, J.)

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